

ORIGINAL

Timolyn Henry

From: ljacobs50@comcast.net
Sent: Friday, December 08, 2006 4:07 PM
To: Filings@psc.state.fl.us
Subject: FW: Sierra Pre-hearing Statement
Attachments: Sierra Pre-hearing Statement

Please see the attachment for the Prehearing Statement of the Sierra Club, Inc, John Hedrick and Brian Lupiani

E. Leon Jacobs, JR.
Williams & Jacobs

CMP _____
COM 5
CTR _____
ECR _____
GCL _____
OPC _____
RCA _____
SCR _____
SGA _____
SEC 1
OTH Kimber

12/8/2006

DOCUMENT NUMBER-DATE

11269 DEC-8 8

FPSC-COMMISSION CLERK

ORIGINAL

Timolyn Henry

From: ljacobs50@comcast.net
Sent: Friday, December 08, 2006 4:05 PM
To: sbrownless@comcast.net; psimms@nrdc.org; Jennifer Brubaker; Katherine Fleming; Gperko@hgslaw.com; Craepple@hgslaw.com; DanaG@hgslaw.com; barmstrong@ngn-tally.com; brett@wildlaw.org; jeanne@wildlaw.org
Cc: Hamilton.Oven@dep.state.fl.us; Michael.Halpin@dep.state.fl.us; kelly.martinson@dca.state.fl.us
Subject: Sierra Pre-hearing Statement
Attachments: Sierra Prehearing Stmt.doc

12/8/2006

WILLIAMS & JACOBS

ORIGINAL

ATTORNEYS AT LAW
P.O. BOX 1101
TALLAHASSEE, FL 32302

MOSES WILIAMS, ESQ.

E. LEON JACOBS, JR., ESQ.

December 8, 2006

Blanca Bayo
Director, Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, Florida 32399-0850

RE: Docket No. 060635-EU,
Petition for determination of need for Electrical power plant in Taylor County
By Florida Municipal Power Agency, JEA, Reedy Creek Improvement District,
and City of Tallahassee.

Dear Ms. Bayo:

On behalf of the Sierra Club, Inc., John Hedrick and Bruce Lupiani, I have enclosed the prehearing statement for filing, consisting of thirteen pages. I thank you for your attention to this matter.

Sincerely,

/s/ E. Leon Jacobs, Jr.

E. Leon Jacobs, Jr.
Attorney for The Sierra Club, John Hedrick and Brian Lupiani

Enclosures

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for) DOCKET NO.: 060635 EU
Electrical power plant in Taylor County by)
Florida Municipal Power Agency, JEA,) DATED: December 8, 2006
Reedy Creek Improvement District, and)
City of Tallahassee.)
_____)

THE SIERRA CLUB, INC., JOHN HEDRICK, AND BRIAN LUPIANI
PREHEARING STATEMENT

Pursuant to Order No. PSC-06-0819-PCO-EU, issued on October 4, 2006, establishing the prehearing procedure in this docket, the Sierra Club, Inc., John Hedrick and Brian Lupiani hereby file their Prehearing Statement.

A. APPEARANCES

E. Leon Jacobs, Jr.
Williams & Jacobs, Jr.
1720 S. Gadsden Street, MS 14, Suite 201
Tallahassee, Florida 32301

B. WITNESSES

The Sierra Club, John Hedrick and Brian Lupiani prefiled the testimony of the following witness:

- (1) Hale Powell. Mr. Powell will address the appropriateness of inputs and assumptions in the economic analysis of the petition for need, and, the appropriate analysis of demand-side management in the application for determination of need.

C. PREFILED EXHIBITS

The Witness for The Sierra Club, John Hedrick and Brian Lupiani prefiled the following exhibits:

Hale Powell:

- (HP-1) - Excerpt of 2005 Annual Report of National Grid USA's DSM Programs
- (HP-2) - Navigant Consulting Report to City of Tallahassee
- (HP-3) - Resume of Mr. Powell
- (HP-4) - Resolutions by Board of Directors of the National Association of Regulatory Utility Commissioners Regarding Critical Infrastructure and Global Warming
- (HP-5) - Report of the American Council for an Energy Efficient Economy, "Aligning Utility Interests with Energy Efficiency Objectives: A Review of Recent Efforts at Decoupling and Performance Incentives"

The Sierra Club, John Hedrick and Brian Lupiani reserve the right to use other exhibits during cross examination of the Participant's witnesses, and will file a notice in accordance with the orders governing procedure identifying any documents the Participants claim to be confidential which the Sierra Club, John Hedrick and Brian Lupiani may use during cross examination.

D. STATEMENT OF BASIC POSITION

The Participants have not submitted adequate data upon which the Florida Public Service Commission ("Commission") can base its decision as to whether the proposed addition of the pulverized coal plant at the Taylor Energy Center is the most cost effective alternative available

to the Participants. The glaring absence of a probing analysis by the Participants, along with questionable inputs and assumptions into econometric models, pose fundamental obstacles. When coupled with volatility currently found in the costs to construct coal plants, in the commodity prices of coal, and in the transportation costs to deliver coal to Florida, the request for proposal procedure (“RFP”) cannot offer the Commission any assurance that this proposal is the most cost effective for each Participant, and the Participants’ initial economic analysis is rendered useless. The Commission must undertake its own cost effectiveness analysis in this case.

Given the uncertainties of building new coal plants, these public owners, who are funding this project with public funds, are accepting imprudent risk to build large, capital intensive units which largely foreclose the integration of innovative, cost effective energy resources in the near term. An especially important omission is the absence of a meaningful assessment of demand-side management, energy efficiency and conservation resources as alternatives to the coal plant. The City of Tallahassee’s course of action is noteworthy. While still supporting the petition as a Participant, Tallahassee has explored and opened prospects for a host of cost effective energy alternatives that diversity the risk inherent in the coal plant.

Moreover, these Participants are electing to take on the clear risk that the operating costs of this coal plant will double due to a restructured regulatory regime. The Participants have chosen to ignore the virtual certainty that the regulatory environment for coal plants will change drastically in the short term, and that this plant, should it be constructed, will be affected by these changes. Even if the Participants are willing to undertake this risk for their taxpayers, the Commission is foreclosed from approving it under the provisions of section 403.519, Florida

Statutes, which requires that this plant be the most cost effective alternative, as actually implemented, not as proposed.

Thus, the Commission should deny this petition because the need for this plant has not been demonstrated. Alternatively, the Commission can only consider this petition with a true and accurate definition of the costs this facility will impose, and a true and accurate analysis of cost effective alternatives.

E. STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: Is there a need for the proposed Taylor Energy Center (TEC) generating unit, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: No.

ISSUE 1A: Is there a need for the proposed TEC generating unit, taking into account the need for electric system reliability and integrity with regard to JEA, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: No.

ISSUE 1B: Is there a need for the proposed TEC generating unit, taking into account the need for electric system reliability and integrity with regard to FMPA, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: No. FMPA, more than any other Participant, is dramatically affected by transmission constraints in Florida in serving its dispersed members. The addition of TEC will require FMPA to take energy from North Florida and distribute to several of its members in Central Florida and South Florida, and therefore add to its operating costs, and complicate its ability to meet growth in demand reliably.

ISSUE 1C: Is there a need for the proposed TEC generating unit, taking into account the need for electric system reliability and integrity with regard to the City of Tallahassee, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: No. The City of Tallahassee has benefited from expert advice which demonstrates that with the implementation of a well-managed portfolio of energy resources, it can reliably serve its growth in energy needs without the risk and cost of TEC.

ISSUE 1D: Is there a need for the proposed TEC generating unit, taking into account the need for electric system reliability and integrity with regard to RCID, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: No. RCID serves a community which has incredible potential for DSM, energy efficiency and conservation. Yet, it has shown no analysis of a meaningful implementation of these measures to defer or eliminate the need for TEC.

ISSUE 2: Is there a need for the proposed TEC generating unit, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: No.

ISSUE 2A: Is there a need for the proposed TEC generating unit, taking into account the need for adequate electricity at a reasonable cost for JEA, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: No. Each of the Participants is electing to take on the risk of drastic escalation in capital costs, in operating and maintenance costs, and in financing costs to build TEC. In addition, the impact of additional environmental costs is ignored in this application. Until the full impact of these cost increases are known, the Participants cannot understand if they are reasonable, or if there are reasonable alternatives.

ISSUE 2B: Is there a need for the proposed TEC generating unit, taking into account the need for adequate electricity at a reasonable cost for FMPPA, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: Same as Issue 2A.

ISSUE 2C: Is there a need for the proposed TEC generating unit, taking into account the need for adequate electricity at a reasonable cost for the City of Tallahassee, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: Same as Issue 2A.

ISSUE 2D: Is there a need for the proposed TEC generating unit, taking into account the need for adequate electricity at a reasonable cost for RCID, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: Same as Issue 2A.

ISSUE 3: Is there a need for the proposed TEC generating unit, taking into account the need for fuel diversity and supply reliability, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: No. The Sierra Club, John Hedrick and Brian Lupiani (“Intervenors”) assert that the Commission must formally define the term “fuel diversity” as used in Section 403.519, Florida Statutes. Petitioners acknowledge, in principle, the value of cost effective diversity in the state’s current generation mix. However, reliance on coal generation in the present marketplace is not cost effective fuel diversity. The Participants’ would be better served by an appropriate portfolio of energy efficiency measures, conservation, demand-side management (DSM) and renewables.

ISSUE 3A: Is there a need for the proposed TEC generating unit, taking into account the need for fuel diversity and supply reliability on JEA’s system, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: Same as Issue 3.

ISSUE 3B: Is there a need for the proposed TEC generating unit, taking into account the need for fuel diversity and supply reliability on FMPA’s system, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: Same as Issue 3.

ISSUE 3C: Is there a need for the proposed TEC generating unit, taking into account the need for fuel diversity and supply reliability on the City of Tallahassee’s system, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: Same as Issue 3.

ISSUE 3D: Is there a need for the proposed TEC generating unit, taking into account the need for fuel diversity and supply reliability on RCID’s system, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: Same as Issue 3.

ISSUE 4: Are there any conservation measures taken by or reasonably available to the Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee (Applicants) which might mitigate the need for the proposed TEC generating unit?

POSITION: No.

ISSUE 4A: Are there any conservation measures taken by or reasonably available to JEA which might mitigate the need for the proposed TEC generating unit?

POSITION: No.

ISSUE 4B: Are there any conservation measures taken by or reasonably available to FMMPA which might mitigate the need for the proposed TEC generating unit?

POSITION: No.

ISSUE 4C: Are there any conservation measures taken by or reasonably available to the City of Tallahassee which might mitigate the need for the proposed TEC generating unit?

POSITION: No.

ISSUE 4D: Are there any conservation measures taken by or reasonably available to RCID which might mitigate the need for the proposed TEC generating unit?

POSITION: No.

ISSUE 5: Does the proposed TEC generating unit include the costs for the environmental controls necessary to meet current state and federal environmental requirements? (Note: Intervenors Whitton, Armstrong, NRDC, and Sierra Club propose adding the phrase, "to meet current and reasonably anticipated state and federal..." to Issue 5)

POSITION: No.

ISSUE 6: Is the proposed TEC generating unit the most cost-effective alternative available, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: No.

ISSUE 6A: Is the proposed TEC generating unit the most cost-effective alternative available for JEA, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: No.

ISSUE 6B: Is the proposed TEC generating unit the most cost-effective alternative available for FMMPA, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: No.

ISSUE 6C: Is the proposed TEC generating unit the most cost-effective alternative available for the City of Tallahassee, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: No.

ISSUE 6D: Is the proposed TEC generating unit the most cost-effective alternative available for RCID, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: No.

ISSUE 7: Based on the resolution of the foregoing issues, should the Commission grant the Applicants' petition to determine the need for the proposed TEC generating unit?

POSITION: No.

ISSUE 8: Should this docket be closed?

POSITION: Yes.

ADDITIONAL ISSUES:

- Have the Applicants appropriately evaluated the cost of CO2 emission mitigation costs in their economic analyses?

POSITION: No.

- Have the Applicants appropriately evaluated compliance costs associated with the Clean Air Interstate Rule (CAIR) and Clean Air Mercury Rule standards?

POSITION: No.

- Is Commission approval of the need for the TEC generating unit consistent with the requirements of Section 366.81, Florida Statutes?

POSITION: No.

- Are the projected purchase prices and transportation costs for natural gas and coal used in the Applicants' need filing reasonable?

POSITION: No.

- Have the Applicants requested available funding from DOE to construct an IGCC unit or other cleaner coal technology?

POSITION: No.

- Has each Applicant secured final approval of its respective governing body for the construction of the proposed TEC generating unit?

POSITION: No.

- Have the Applicants appropriately evaluated the cost of compliance with mercury, NO₂, SO₂, particulate emission and other applicable environmental and public health standards?

POSITION: No.

- Are TEC's estimated construction costs reasonable?

POSITION: No.

- Should the participants be required to report to the commission substantial revisions to capital costs and O&M costs which were not projected in the application, but which must be incurred at the time the plant becomes operational, and, should the participants analyze these "actual" costs in a least cost analysis?

POSITION: The FPSC is not able to determine whether a proposal is the least cost option until costs are finally established. These costs must reported and subjected to a least-cost analysis.

F. STIPULATED ISSUES

The Sierra Club, John Hedrick and Brian Lupiani have not stipulated to any issues at this time.

G. PENDING MOTIONS OR OTHER MATTERS

The Sierra Club, John Hedrick and Brian Lupiani have no pending motions or other matters.

H. PENDING REQUESTS OR CLAIMS OF CONFIDENTIALITY

The Sierra Club, John Hedrick and Brian Lupiani have no pending confidentiality requests or claims.

I. OBJECTIONS TO WITNESS' QUALIFICATIONS AS AN EXPERT

None at this time.

J. COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE

The Sierra Club, John Hedrick and Brian Lupiani have complied with all applicable requirements of the order establishing procedure in this docket.

Respectfully submitted this 8th day of December, 2006 .

/s/ E. Leon Jacobs

E. Leon Jacobs, Jr.
Williams & Jacobs
P.O. Box 1101
Tallahassee, Florida 32302
(850) 222-1246
Fla. Bar ID. 0714682
Attorney for The Sierra Club, John Hedrick and Brian
Lupiani

Certificate of Service

I certify that a copy of this Prehearing Statement in Docket No. 060635-EU was provided this 8th day of December, 2006, by electronic service to the following:

Gary V. Perko, Esq.
Carolyn S. Raepple, Esq.
Hopping Law Firm
P.O. Box 6526
Tallahassee, FL 32314-6526
Gperko@hgslaw.com
Craepple@hgslaw.com

Brian P. Armstrong, Esq.
7025 Lake Basin Road
Tallahassee, FL 32312
barmstrong@ngn-tally.com

Suzanne Brownless, Esq.
Suzanne Brownless, P.A.
1975 Buford Blvd.
Tallahassee, FL 32308
SBrownless@comcast.net

Jeanne Zokovitch Paben, Sr. Staff Attorney
Brett M. Paben, Sr. Staff Attorney
WildLaw
1415 Devils Dip
Tallahassee, FL 32308-5140
jeanne@wildlaw.org

Kelly Martinson, Asst. General Counsel
Department of Community Affairs
Division of Community Planning
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100
kelly.martinson@dca.state.fl.us

Buck Oven
Michael P. Halpin
Department of Environmental Regulation
Siting Coordination Office
2600 Blairstone Road MS 48
Tallahassee, FL 32301
Hamilton.Oven@dep.state.fl.us
Michael.Halpin@dep.state.fl.us

Harold A. McLean
Office of the Public Counsel
111 West Madison Street, Room 812
Tallahassee, FL 32399
hallmc@earthlink.net

Jennifer Brubaker, Esq.
Katherine Fleming, Esq.
Legal Division
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
jbrubake@psc.state.fl.us
kflemmin@psc.state.fl.us

Patrice L. Simms
Natural Resources Defense Council
1200 New York Ave., YW, Suite 400
Washington, DC 20005
psimms@nrdc.org

Respectfully submitted,

/s/ E. Leon Jacobs

E. Leon Jacobs, Jr.
Williams & Jacobs
P.O. Box 1101
Tallahassee, Florida 32302
(850) 222-1246
Fla. Bar ID. 0714682
Attorney for Petitioners